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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,176	07/24/2003	Jared P. Andrews SR.	JMCOFFE.013A2	1457
20995	7590	11/30/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Sp

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/626,176	ANDREWS, JARED P.
	<b>Examiner</b>	<b>Art Unit</b>
	Gary E. Elkins	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. ____ .   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: ____ .                                   |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: On page 1, under “Related Cases”, the Serial Number of the provisional application has been omitted. Appropriate correction is required.
2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: no description can be found in the specification of the embodiment of claim 18 where the tab is affixed to the outer shell and is configured such that when the shell is erected from a flattened state, the outer shell expands the bag. Also, no description of the embodiment of claim 12 where the bag is adhered to at least one of the walls can be found in the specification.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the embodiment of claim 18 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must

be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No written description is provided of an embodiment where the tab affixed to the outer shell and is somehow positioned to expand the bag when the outer shell is erected.

5. Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The disclosure fails to enable one skilled in this art to make and use the embodiment of claim 18. No description is provided of the positioning of the tab relative to the outer shell such that one can expand the bag by erecting the container from the blank.

6. Claims 2, 3, 10 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, “a bottom surface” is a double inclusion insofar as the bottom surface was previously set forth in claim 1.

In claim 3, “an upper surface” is a double inclusion insofar as the top surface was previously defined in the claims.

In claim 3, “a handle” is a double inclusion of an element.

In claim 10, “therein” is unclear since it appears to be referring to the handle.

The scope of claim 18 is unclear with respect to how the tab is affixed to the outer shell to enable the claimed intended use.

#### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Andrews, Sr. et al.

#### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 13, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews, Sr. et al in view of either Roy (WO '050) or Mead et al. Andrews, Sr. et al discloses all structure of the claimed container except a tab extending from the inner bag which can be used to displace the bag walls. Each of Roy and Mead et al teaches that it is known to make a bag with a tab (28, 57, respectively) to allow easier separation of flattened bag walls during set up of the bag. It would have been obvious to make the bag in Andrews, Sr. et al with a tab as taught by either Roy or Mead et al to allow easier separation of the bag walls during formation of the container.

11. Claims 13, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews, Sr. et al in view of Heuberger et al, Gordon et al or Walker. Andrews, Sr. et al discloses all structure of the claimed container except a tab extending from the inner bag which can be used to displace the bag walls. Each of Heuberger et al, Gordon et al and Walker teaches that it is known to make a spout bag in a box where the bag includes a tab or seam (41, 60, 23) extending from the bag. It would have been obvious to substitute a bag including a seam for the bag in Andrews, Sr. et al as taught by any one of Heuberger et al, Gordon et al or Walker as a mere selection of the particular known seamed bag one wishes to use. It is noted that each of the tabs or seams in Heuberger et al, Gordon et al and Walker would allow grasping of the bag to separate the walls once the spout is inserted in the outer container aperture.

12. Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 13 and 15 in either paragraph 10 or 11 above, and further in view of Walker or Marquardt. Modified Andrews, Sr. et al does not evidence radial slits formed around

the opening in the sidewall (cl. 14) or the opening in the upper flap (cl. 16). Each of Walker and Marquardt teaches that it is known to make a spout locking opening in a container with radial slits around the opening to allow easy insertion of the spout while resisting removal of the spout from the opening. It would have been obvious to make the opening in either the sidewall or the upper flap in Andrews, Sr. et al with radial slits as taught by either Walker or Marquardt to facilitate direct insertion of the spout through the opening (as opposed to sliding engagement as is done with the top flap in Andrews, Sr. et al) while resisting removal of the spout after insertion.

### *Conclusion*

The remaining cited prior art is illustrative of the general state of the art.

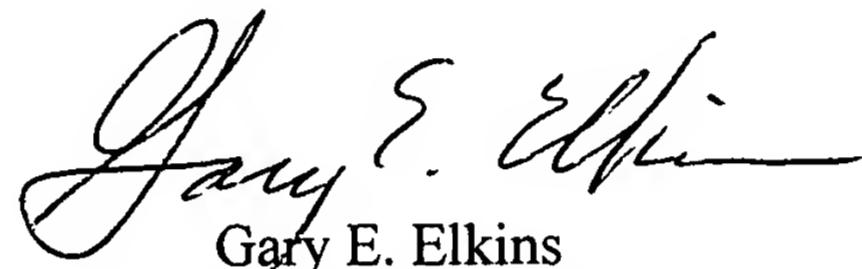
In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained form the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.



Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
27 November 2005